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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1953

No.

STATE OF FLORIDA, ex rel.
R. F. SHROPSHIRE,

Petitioner,

v.

NATHAN MAYO, as Commisisoner
of Agriculture of the State of
Florida and Custodian of State
Prisoners,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

State of Florida, ex rel. R. F. Shropshire prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Florida, entered in the above entitled case on November 20th, 1953.

OPINIONS BELOW

The opinion of the Supreme Court of Florida (R. 45) is reported in —— Fla. ——, 68 So. 2d 393.

JURISDICTION

The judgment of the Supreme Court of Florida was entered on November 20, 1953 (R. 45). A petition for rehearing filed on December 5, 1953 (R. 46) was denied on December 15, 1953 (R. 55). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1257(3).

The proceedings in the Supreme Court of Florida were one of original jurisdiction. The Federal Constitutional issues sought to be here reviewed were raised, in the first instance, in the Supreme Court of Florida by the allegations of the Petition for Writ of Habeas Corpus (R. 1-26). The petitioner specifically alleged that his conviction was in violation of his rights and privileges under the Fourteenth Amendment to the Constitution of the United States (R. 1, 4, 5, 6, 8 and 10). In said petition, petitioner asserted: (1) the denial of an opportunity to secure counsel (R. 4, 5 and 6), (2) the failure of the State to advise him of his basic constitutional rights and privileges (R. 4 and 5), (3) his lack of mental capacity at the time of his arraignment and conviction (R. 4, 5 and 8) and, (4) the denial of a fair opportunity to learn of and assert his said rights and privileges (R. 5 and 6). The Supreme Court of Florida granted the Petition for Habeas Corpus and issued the Writ (R. 27). The Supreme Court of Florida then ordered a hearing to inquire *solely* into the mental capacity of the petitioner at the time of conviction (R. 35 and 36) and wholly failed and refused to consider the other questions presented as to the rights and privileges under the Constitution of the United States. In its opinion below (R. 45) the Supreme Court of Florida completely ignored the aforesaid Federal Constitutional issues raised by the said Petition for Writ of Habeas Corpus. Petitioner, in his petition for rehearing (R. 46) again specifically raised and stressed the aforesaid Federal Constitutional issues. The Supreme Court of Florida in its order denying petition for rehearing (R. 55) stated

that the allegations of the petition had been duly considered. Once again, that Court refused to recognize the rights of petitioner under the Federal Constitution, or pass thereupon.

QUESTIONS PRESENTED

1. Whether the Fourteenth Amendment to the Constitution of the United States requires that an accused, in state courts, appearing without counsel be advised of his rights arising thereunder.

2. Whether the Fourteenth Amendment to the Constitution of the United States requires that an accused, in state courts, be given an opportunity to secure counsel and be represented and advised by counsel.

3. What constitutes *an opportunity to secure counsel* in order that process of law may be "due"?

4. What does the Fourteenth Amendment to the Constitution of the United States require of the States in order that an accused be given an opportunity to secure counsel?

5. What does the Fourteenth Amendment to the Constitution of the United States require of the States in order that an accused, appearing without counsel, be advised of his fundamental rights and privileges?

CONSTITUTIONAL AMENDMENT INVOLVED

The pertinent provision of the Fourteenth Amendment to the Constitution of the United States is contained in Section 1 thereof, as follows:

> "• • • nor shall any State deprive any person of life, liberty, or property, without due process of law; • • •"

STATEMENT OF THE CASE

On September 27th, 1944, petitioner was informed against by the Acting County Solicitor for Duval County, Florida, for violation of the narcotic laws (R. 20). He was accused, in three counts, of obtaining narcotics by the forgery of a prescription (R. 21-22). On the same date a capias for petitioner's arrest (R. 24) was issued and returned served (R. 25). The return recites that petitioner was arrested on September 27th, 1944 (R. 25) and that no bond was set (R. 25). On September 28th, 1944, petitioner was arraigned upon said information and required to plead thereto (R. 19). He entered pleas of guilty and was sentenced to serve ten (10) years at the state prison (R. 19-20). He appeared without counsel and was not advised of any of the rights and privileges to which he was entitled (R. 12-13). From the evening of his arrest until the morning of his arraignment and conviction he was confined in the Duval County jail and was unable to secure the benefit or advice of counsel (R. 13). On September 30th, 1944, petitioner was delivered to the state penitentiary (R. 25-26). His pleas were based upon his lack of understanding of the attendant proceedings and of the nature and consequences of his acts and because he had not been afforded an opportunity to secure the advice of counsel and could not defend himself (R. 3, 13-14).

On June 1st, 1953, petitioner filed his Petition for Writ of Habeas Corpus (R. 1) in the Supreme Court of Florida. The Writ of Habeas Corpus was issued on June 8th, 1953 (R. 27). The respondent filed his return to the Writ on June 16th, 1953 (R. 28-32). Petitioner filed his motion to quash return (R. 32) and motion for discharge notwithstanding return (R. 33-34) on June 17th, 1953. The Supreme Court of Florida ordered the cause referred to the Circuit Court of Duval County, Florida to inquire into the mental condition of petitioner at the time of trial (R. 35-36). The circuit judge held a hearing on the question on October

7th, 1953, and thereafter filed his report on October 13th, 1953 (R. 40-41). The petitioner filed exceptions to the said report on October 29th, 1953, (R. 41-44). The exceptions were overruled and the opinion of the Supreme Court of Florida was filed November 20, 1953 (R. 45). A petition for rehearing filed December 5, 1953 (R. 46-55) was denied and final judgment of the Supreme Court of Florida entered on December 15, 1953 (R. 55).

REASONS FOR GRANTING THE WRIT

1. It is believed that the questions presented numbered 1, 3, 4 and 5, present federal questions of substance not heretofore determined by this Honorable Court. In regard to the first of these questions, Judge Schwellenbach of the District Court of the Eastern District of Washington, Southern Division, in the case of VOIGHT v. WEBB, Superintendent, Washington State Penitentiary, 47 F. Supp. 743. stressed the fact that the accused was not represented by counsel nor was he, at any time, advised of his right to counsel, and he held in this case that the sentence was void because of the deprivation of the petitioner of his right to be protected by the due process of law clause under the Fourteenth Amendment to the Constitution of the United States. In order to give effect to the real requirements of due process of law, an accused person, it would seem, should at least be advised of his right to counsel. Only after being so advised could such accused be said to have waived his basic constitutional rights and privileges. The most basic precept of fundamental justice dictates the necessity of advising such accused of such rights. It is submitted that the trial court in the cause below failed to accord your petitioner due process when it failed to advise him as to said rights and privileges. An affirmative ruling in regard to this question would go far in raising the standards of the administration of criminal justice in the United States and would insure an accused, in state courts, of his opportunity either to secure or intelligently waive his basic rights.

2. The second of such questions was recently decided by this Honorable Court in the cases of Foster and Payne vs. State of Illinois, 67 S. Ct. 1716, 332 U.S. 134, 91 L.Ed. 1955. It was there held that process of law in order to be 'due' requires that a state give a defendant *ample opportunity* to meet an accusation. Accordingly, an important constitutional safeguard was involved which the Supreme Court of Florida apparently ignored. It is believed that this Honorable Court should exercise its supervisory powers in this regard.

3. The importance of the third question presented would appear to be self-evident. In the Foster and Payne cases (Supra) the Court used the adjective 'ample'. What does this term require? Webster states that 'ample' means, to-wit: of large extent; sufficient to satisfy; or, more than adequate. It is suggested that the term at least implies that a 'sufficient' opportunity to secure counsel must be given an accused in state courts. Petitioner submits that an 'ample' or 'sufficient' opportunity requires that an accused be allowed a reasonable length of time within which to cause a message to be delivered from the place of incarceration to friends, relatives or counsel. It is ridiculous to assume that a person confined in a jail cell could, without establishing some contact, secure the advice and benefit of counsel within so short a period of time as appears from the record in this case (R. 3, 4 and 25). It is felt that this question presents an issue of utmost importance in the field of criminal procedure in this country.

4. In regard to the last of such questions presented, absolute fairness and proper administration require that facilities be made available to an accused and that he be advised of his right to use such facilities in order to secure counsel of his choice. A decision as to these points would effect every criminal case in every court, as well as every arrest in this country. No matter what the crime charged, an

accused should receive, as soon after an arrest as is practicable, the affirmative right to use a telephone or other means of communication with the world outside of the place of detention.

5. It would appear that the Supreme Court of Florida is clearly erroneous and the opinion of such Court is clearly lacking in the principle of justice, decency and fair play. Petitioner urges this contention in view of the fact that the Florida court wholly failed to recognize or pass upon the merits of his assertions as to the denial of his basic rights.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

April 5, 1954.

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